

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

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PLR-149950-12

Date:

December 27, 2012

TY:

Legend

Parent =

Sub 1 =

Sub 2 =

Subsidiaries =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Dear \_\_\_\_\_ :

This letter responds to your request, dated November 16, 2012, submitted on behalf of Parent, requesting a ruling that the Commissioner determine, under § 1.1502-75(b)(2) of the Income Tax Regulations, that the Subsidiaries joined in the making of the initial consolidated Federal income tax return filed by Parent for its short taxable year ending on Date 5. The information submitted in that letter and in subsequent correspondence is summarized below.

### SUMMARY OF FACTS

Parent, a C corporation, was formed on Date 2 as a holding company. Prior to that, on Date 1, Sub 1 was formed. On Date 3, the stock of Sub 1 was contributed to Parent in a transaction constituting a reverse acquisition within the meaning of § 1.1502-75(d)(3).

On Date 4, Sub 1 acquired the stock of Sub 2 in a transaction that did not constitute a reverse acquisition within the meaning of § 1.1502-75(d)(3) (the "Acquisition"). Before the Acquisition, Sub 2 had been the common parent of a consolidated group that consisted of Sub 2 and all of its subsidiaries.

For the short taxable year ending Date 5, Parent timely filed a Form 1120 that included items of income and deduction of Parent and the Subsidiaries for that taxable year (the "Return"). A box was checked on the Return to indicate that the Return was a consolidated return. Additionally, a Form 851, Affiliations Schedule, was attached to the Return and identified Parent and the Subsidiaries as members of a consolidated group. Also, a ratable allocation election statement under § 1.1502-76(b)(2)(ii)(D) was attached to the Return. However, Forms 1122 for the Subsidiaries were not prepared or included with the Return.

The statute of limitations under § 6501(a) has not expired with respect to the Return.

### REPRESENTATIONS

Parent has made the following representations:

- (a) Except for the failure to timely file Forms 1122 for the Subsidiaries, Parent and each of the Subsidiaries were eligible to join in the filing of a consolidated Federal income tax return, with Parent as the common parent, for the taxable year ending Date 5.
- (b) The Subsidiaries were included on the Form 851 attached to the Return.

- (c) All income, gain, loss, and deduction items for the Subsidiaries for the short taxable year ending Date 5 were included on the Return, timely filed by Parent for the short taxable year ending Date 5, as if Parent were the parent of a consolidated group that included the Subsidiaries.
- (d) Neither Parent nor any of the Subsidiaries filed a separate return for the taxable year ending Date 5.

#### APPLICABLE LAW

Section 1.1502-75(a)(1) provides, in part, that an affiliated group of corporations that did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year, provided that each corporation which has been a member during any part of the taxable year for which the consolidated return is to be filed consents (in the manner provided in § 1.1502-75(b)). If a group wishes to exercise its privilege of filing a consolidated return, such consolidated return must be filed not later than the last day prescribed by law (including extensions of time) for the filing of the common parent's return.

Section 1.1502-75(b)(1) provides that the consent of a corporation referred to in paragraph (a)(1) of this section shall be made by such corporation joining in the making of the consolidated return for such year. A corporate subsidiary shall be deemed to have joined in the making of such return for such year if it files a Form 1122 in the manner specified in § 1.1502-75(h)(2). Section 1.1502-75(h)(2) provides that, for a group to file a consolidated return under § 1.1502-75(a)(1), a Form 1122 must be executed by each subsidiary. Form 1122 is not required for a taxable year if a consolidated return was filed (or was required to be filed) by the group for the immediately preceding year.

Section 1.1502-75(b)(2) provides that if a member of the group fails to file Form 1122, the Commissioner may under the facts and circumstances determine that such member has joined in the making of a consolidated return by such group. The circumstances, among others, that will be taken into account in making this determination include: (i) Whether or not the income and deductions of the member were included in the consolidated return; (ii) Whether or not a separate return was filed by the member for that taxable year; and (iii) Whether or not the member was included in the affiliations schedule, Form 851.

Section 1.1502-75(h)(1) provides that the consolidated return shall be made on Form 1120 for the group by the common parent corporation. The consolidated return, with Form 851 attached, shall be filed with the district director with whom the common parent would have filed a separate return.

## RULING

Based solely on the information submitted and representations made, we rule that the Subsidiaries will be treated under § 1.1502-75(h)(2) as if they had filed Forms 1122 with Parent's consolidated Federal income tax return for the short taxable year ending Date 5, and thus the Subsidiaries will be treated as having joined in the making of the consolidated return for such year. § 1.1502-75(b)(2).

## PROCEDURAL STATEMENTS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any other aspect of any transaction or item discussed or referenced in this letter, or about the tax treatment of any condition existing at the time of, or effects resulting from, any transaction or item that is not specifically covered by the above ruling.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

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Richard K. Passales  
Senior Counsel, Branch 4  
Office of Associate Chief Counsel  
(Corporate)